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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,958	09/12/2003	Harlen Wheatley	010864.00101	6318
22908	7590	05/08/2006	EXAMINER	
BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606				CHAWLA, JYOTI
		ART UNIT		PAPER NUMBER
		1761		

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/660,958	WHEATLEY, HARLEN
	<b>Examiner</b>	<b>Art Unit</b>
	Jyoti Chawla	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 2/13/2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

1. The response filed February 13, 2006 has been entered. Claims 1-12 remain pending. Claims 1-7 have been amended and Claims 8-12 have been added to the application.

### Claim Objections

2. Claim 12 is objected to because it is the exact same claim as claim 9 and in order to expedite prosecution is being rejected in the same way as claim 9.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the last step of claims 1 and 10 applicant recites "limestone is added to fourth mixture to produce vodka having about 45% alcohol by volume". The specification in paragraph 4 recites the addition of limestone to make vodka 80 Proof (i.e., 40% alcohol by volume). Therefore the "about 45%" would be considered new matter for examination purposes.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. In claims 1 and 10 applicant recites "limestone is added to fourth mixture to produce vodka having about 45% alcohol by volume". The term "about 45%" is indefinite and is unclear whether it means 40% or 50% or any other percentage. Clarification and/ or correction is required.
7. Claim 11 is indefinite as it does not describe at what point in the process of claim 10 is the white corn unbroken and whole. Clarification and/ or correction is required.

#### ***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US Patent Number 4617270), in view of Vickers Jr. (US Patent Number 6846503 B2) and Markham (US patent Number 2892757). Further in view of Christensen (US Patent Number 2342330), Jacobs et al. (US Patent Number 3061438), and Van Gheluwe et al. (US Patent Number 4207345). Further, in view of Data Sourcebook for

food scientists and Technologists, ISBN 1-56081-009-2), and www.dictionary.com for the reasons given in the office action mailed November 14, 2005 further in view of the combination of www.sazerac.com, www.rainvodka.com, Organic Producer profile-Southern Organic Resource Guide www.attra.ncat.org (hereinafter referred to as "Organic Producer Profile"), Economic Microbiology Volume 1, Chemistry and Technology of Wines and Liquors, and Webster's Third new International Dictionary of English Language 1961 used to provide evidence to support the previous rejection.

9. The amendments made to the claims 1-7 are addressed along with the evidentiary references supplied in the current office action.
10. In claim 1 applicant has removed the temperature requirement for holding the cooked corn mash and added the limitation of cooling the cooked mash "in the circulation tank", "about 5 days" (fermentation), "fermented corn" (for distillation), "about 3 months" (storing distilled alcohol) and "about" (in relation to alcohol %) which has not been addressed in the office action mailed November 14, 2005.
11. In regard to cooling the corn in the circulation tank while the pressure-cooked corn is being cooled is a matter of preference of the manufacturer and whether the fermentation plant has a batch or continuous process setup.
12. In regard to "about" replacing "at least" in claims 1-7, does not change the reasons for rejection stated in the office action mailed November 14, 2005. In regards to "about 45%" in claims 1and 10, see discussion above in relation to indefiniteness and new matter.

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13. The amendments to claims 2-7 are "comprises" and "distilling" and they do not change the reasons for rejection stated in the office action mailed November 14, 2005.

14. In regard to claims 1-7 www.sazerac.com, www.rainvodka.com, Organic Producer profile- Southern Organic Resource Guide (www.attra.ncat.org), are being relied on as evidence that it is conventional in the art to employ organically grown grain in process of making alcoholic beverages including vodka using a kettle still and employ a multiple step distillation. Since the art taken as a whole teaches use of corn as a starting material in alcohol/ vodka production process, it would have been obvious in the view of evidence supplied employ organic grain (corn) to make vodka.

15. As far as the variety of corn is concerned fine white corn varieties have been popular choices of the distilleries in the United States as evidenced by Chemistry and Technology of Wines and Liquors (pages 39 and 43), and also by "Organic Producer Profile". Therefore Chemistry and Technology of Wines and Liquors teaches the conventionality of using white corn as the starting material for making of vodka.

16. Economic Microbiology Volume 1 is being relied on as further evidence of employment of multiple column stills to perform distillations during process of making substantially pure alcoholic beverages like vodka (especially page 561) not only to improve the product but also to make the process more efficient. www.sazerac.com (quadruple distillation, page 1), www.rainvodka.com (Four distillations, Page 2), and "Organic Producer Profile" (vodka distilled seven times) are also evidence to the fact that multiple distillation steps.

17. In regard to claim 8, since Chemistry and Technology of Wines and Liquors teaches the average moisture content of American Maize (corn) is 10.75% (page 43) and Economic Microbiology Volume 1, teaches maize stored for making gin and vodka provided the moisture content is less than 14% (page 546), therefore it would have been obvious to modify the combination of references used in regard to claim 1, if necessary, and employ corn with the moisture content in the desired range recited by the applicant in view of art taken as a whole teaches that corn with moisture level >14% is considered unsuitable for the production of distilled alcoholic beverages (Chemistry and Technology of Wines and Liquors, pages 42-43).

18. Claim 9 recites a “doubler” and according to Webster’s Dictionary page 679 defines a doubler as “part of a distilling apparatus for intercepting the heavier fractions and returning them to be redistilled” and doubling as “the process of redistilling spirits to improve the strength and flavor”. Use of doubler is considered conventional in distillation of liquors according to “Chemistry and Technology of Wines and Liquors” (Figures 20 and 21, pages 100-103 and pages 140-142), where alcoholic concentration can be more efficiently achieved if the pot still is equipped with a doubler.

19. In regard to claim 9 it is also well established in the distilling industry to use multiple column stills to purify and concentrate the product (as discussed in the office action mailed dated November 14, 2005), as taught by Economic Microbiology Volume 1, which provides evidence to the fact that multiple column stills are conventionally used in distilling industry (pages 560-562). Specifics taught by [www.sazerac.com](http://www.sazerac.com), [www.rainvodka.com](http://www.rainvodka.com), and “Organic Producer profile” also provide further evidence to the

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conventionality of multiple distillations to as they perform four to seven distillation steps.

As evidenced by art taken as a whole, it is well established in the art to process the various distillates through multiple distillation steps using the equipment available and considering the time and cost constraints to achieve the desired degree of purification and/ or concentration as recited by the applicant.

20. Therefore, passing the third distillate through a doubler and repeating the doubler step three more times as recited by the applicant, is the same as performing additional distillation steps to further purify the liquor to the desired degree and is art recognized as evidenced by "Chemistry and Technology of Wines and Liquors", [www.sazerac.com](http://www.sazerac.com), [www.rainvodka.com](http://www.rainvodka.com), and "Organic Producer profile" and applicant's intended function would have been obvious.

21. In regard to new Claim 10, it essentially mirrors the recitation of claim 1 and is rejected for the reasons given in regards to claim 1 as discussed above in this office action and the office action mailed November 14, 2005. It is noted that the moisture content of corn should be less than 14% which is the case as discussed in regards to claim 8 (Chemistry and Technology of Wines and Liquors, page 43; and Economic Microbiology Volume 1, page 546).

22. In regard to claims 11, the art taken as a whole teaches white corn as discussed above in this office action and the one mailed November 14, 2005. The use of whole corn as the starting material is also conventional. Chemistry and Technology of Wines and Liquors (pages 42-43) disclose that the average moisture content of American maize (corn) is 10.75% and that excess moisture or frost injure the corn and make it

unsuitable for use for the liquor industry. Therefore, it would be obvious to the one with ordinary skill in the art at the time of the invention to use whole undamaged corn having moisture content under 14% as the starting material.

23. In regard to claim 12 see the explanation above in regards to claim 9.

### **Response to Arguments**

24. Applicant's arguments filed February 13, 2006 have been fully and carefully considered but they are not persuasive.

25. With respect to the rejections made under 103(a), Applicants contend that the "The Examiner has rejected claims 1-7 in view of 8 cited references". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

26. Applicants contend that two out of all the references used (ANDERSON U.S. Patent No. 4,617,270 and VICKERS U.S. Patent No. 6,846,503) do not teach the multiple distillation steps, do not use organic white corn and do not have the specific stills as recited by the applicant. Applicant's argument is directed to only couple of the references and since the references have not been applied under 35U.S.C. (102) anticipation but instead under 35U.S.C. (103) obviousness, applicant's argument is not persuasive.

27. Applicant traverses the rejection of claims 1-7 by arguing that the references do not teach the distillation steps but references Anderson and Vickers do not have to

teach all the steps for the rejection to be proper since the other references relied on in the previous office action (mailed November 14, 2005) teach the conventionality of multiple distillations and various stills used in the art.

28. Several other references have been provided in the present office action to provide further evidence to the fact that all the points argued by the applicant are very well known in the art specifically the kind of still used to make vodka and the number of distillation steps the liquor goes through and the variety of corn or grain used to make the vodka.

29. It is conventional to vary the number of distillation steps and the kind of stills used in the art of making alcoholic beverages depending on the following factors:

- The availability of the equipment employed for fermentation and distillation,
- The cost involved in acquisition and maintenance of the equipment,
- Size of the operation or plant,
- And the purity and concentration of the resulting vodka desired.
- Please also note the rejection on record mailed November 14, 2005.

### ***Conclusion***

30. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

31. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2946687, US 3930042, US 5618573, US 5370891, US4792459 and H621 all describe steps and methods of making vodka or other distilled beverages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla  
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Examiner  
Art Unit 1761

Steve Weinstein  
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